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| 267 Edgeco LLC v City of New York |
| 2022 NY Slip Op 33302(U) |
| June 2, 2022 |
| Supreme Court, New York County |
| Docket Number: Consolidated Index No. 652795/2012 |
| Judge: J. Mabelle Sweeting |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CITY PART 62

-----X
267 EDGECO LLC and BRADHURST ASSOCIATES,

Plaintiffs,

-against-

CITY OF NEW YORK and CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC.,

Consolidated Index No.
652795/2012

Defendants.

-----X
CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.,

Motion Sequence Nos.
003 and 004

Plaintiff,

-against-

CITY OF NEW YORK,

DECISION AND ORDER

Defendant.

-----X
NEW YORK CITY TRANSIT AUTHORITY,

Plaintiff,

-against-

CITY OF NEW YORK and CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC.,

Defendants.

-----X
CITY OF NEW YORK,

Plaintiff,

-against-

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.,

Defendant.

-----X

HON. J. MACHELLE SWEETING, J.S.C.:

Motion Sequence Numbers 003 and 004 are consolidated herein for disposition.

The disputes underlying this action arose on August 12, 2011, when a water main owned by the City of New York (“the City”) and a nearby gas main owned by Consolidated Edison Company of New York, Inc. (“Con Ed”) broke (“Main Breaks”), at or about the same time, at the intersection of St. Nicholas Avenue and 152nd Street in the County, City and State of New York.

Plaintiffs 267 Edgeco LLC and Bradhurst Associates (collectively, “Edgeco”) owns 4 residential apartment buildings located at 267 Edgecombe Avenue, 192 Bradhurst Avenue, 196 Bradhurst Avenue, and 200 Bradhurst Avenue (collectively, “Premises”), near the Main Breaks. Edgeco sues the City and Con Ed for costs incurred during the time gas service was shut off to its buildings. The City and Con Ed sue each other, alleging that the other’s negligence caused the Main Breaks, and seek to recover repair costs. The New York City Transit Authority also sues the City and Con Ed for negligence in causing the water main break, which flooded its nearby subway line.

In Motion Sequence Number 003, the City moves for summary judgment, dismissing Edgeco’s sole cause of action for negligence, alleging that Edgeco has not shown it has suffered any compensable harm. Edgeco opposes. Con Ed does not join the City in moving for summary judgment against Edgeco.

In Motion Sequence Number 004, the City moves for partial summary judgment against Con Ed, seeking dismissal of those portions of Con Ed’s damage claims against the City which relate to the recovery of the labor costs of Con Ed’s employees, to its invoicing from vendors and contractors which allegedly predate the Main Breaks, and to other invoicing for which Con Ed has purportedly failed to provide sufficient evidentiary proof. Con Ed opposes.

Discussion

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]) [internal citations omitted].

To prevail, the movants must produce evidentiary proof in admissible form sufficient to warrant granting summary judgment in their favor (*GTF Mktg. v Colonial Aluminum Sales*, 66 NY2d 965, 967 [1985]). Once the movants have made their showing, the burden shifts to the opposing party, to submit proof in admissible form sufficient to show a question of fact exists, requiring trial (*Kosson v Algaze*, 84 NY2d 1019, 1020 [1995]).

In deciding a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmovant (*Prine v Santee*, 21 NY3d 923, 925 [2013]). Party affidavits and other proof must be examined carefully “because summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue” (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978] [citation and internal quotation marks omitted]). Still, “only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment” (*id.*).

Motion Sequence No. 003

In Motion Sequence Number 003, the City seeks summary judgment against Edgeco, dismissing its complaint, alleging that Edgeco cannot recover against the City on its sole cause of action for negligence because Edgeco is unable to show that it suffered any compensable damage due to the Main Breaks. The City asserts that Edgeco's deposition witness, Miguel Leon, a representative of its building management company, conceded that neither the Main Breaks nor the interruption of Edgeco's gas service caused any physical damage to the Premises (affirmation of Gina M. Fortunato, executed July 13, 2020 [Fortunato Edgeco affirmation], ¶ 29 [NYSCEF Doc No. 81], and exhibit B thereto [NYSCEF Doc No. 83] [December 22, 2015 deposition transcript of Miguel Leon [Leon Tr], at 22:3-6 and 55:6-12]).¹

The City further contends that Mr. Leon admitted that none of Edgeco's tenants moved out because of the temporary lack of gas service, and so Edgeco suffered no loss of rental income either (Fortunato Edgeco affirmation ¶ 31, citing Leon Tr at 41:17-42:29; 47:17-48:3).

In opposition, Edgeco asserts that restoration of its gas service was delayed by Con Ed's requirement that its Premises pass gas pressure tests. Certain apartments in the Premises, however, could not pass the pressure tests because they did not have necessary shutoff valves on their gas lines. As a result, Edgeco first had to install these shutoff valves and additional piping in those apartments. To do this work, the installers had to make large holes in the affected apartments' floors and walls, requiring Edgeco to incur repair costs of \$84,000, plus an additional \$1,880.84, representing the cost of hot plates and microwaves Edgeco claims to have bought for its tenants, to see them through the gas outage.

¹ Mr. Leon is the Director of Administration of Tryax Realty Management, the property manager of real estate owned by Edgeco (Leon Tr, *supra*, 12:15-3:12, 19:6-20:5).

Edgeco maintains that, “but for” the City’s negligence in causing the water main break, which allegedly caused the gas main break, Edgeco’s gas service would not have been interrupted. If the interruption in service had not occurred, gas system pressure tests would not have been needed, and so there would have been no reason to demolish floors and walls at the Premises, to install the missing shutoff valves, or to buy microwaves and hot plates for the tenants. Edgeco further contends that the City’s motion must be dismissed because it has failed to raise any particular code violation or to present any evidence of a “sub-Code” condition at the Premises that required the installation of shutoff valves.

Edgeco asserts that it documented its damages by producing invoices and cancelled checks, showing payments for floor and wall repairs and for the purchase of hot plates and microwaves, in its June 2, 2020 Response to Notice of Discovery and Inspection (affirmation of Robert G. Rafferty, Esq., executed July 22, 2020 [Rafferty affirmation], 6-7 [NYSCEF Doc No. 136]). Edgeco did e-file this Response to Notice of Discovery and Inspection under the name of “Response to Discovery Demands” on June 2, 2020 (NYSCEF Doc No. 79), together with copies of invoices and checks, for hot plates/microwaves as exhibit A, and for floor and wall repairs as exhibit B. Edgeco, however, omitted the Response to Discovery Demands and its exhibits from the Rafferty affirmation and so these assertions are not properly substantiated (*Ramos v New York City Hous. Auth.*, 264 AD2d 568, 568 [1st Dept 1999] [attorney affirmation submitted without relevant documents or deposition transcripts to substantiate assertions insufficient on summary judgment motion]). Even if, *arguendo*, that this court found that Edgeco could rely on the exhibits to its Response to Discovery Demands on this motion, its opposition still falls short.

The City's Motion Sequence Number 003 is premised on its assertion that the extended interruption in gas service and system upgrades were made necessary, not because of any physical damage the City's alleged negligent conduct caused to the Premises, but by Edgeco's gas system being outdated and not "up to Code." In making this argument, the City relies on *256 E. 10th St. Assocs. v Consolidated Edison Co. of N.Y.* (282 AD2d 293 [1st Dept 2001]). In that case, the First Department, addressing similar circumstances, upheld dismissal of the complaint, determining that Con Ed's purported negligence could not be the proximate cause of plaintiff's alleged injury, or even causally related to the asserted harm, because "the need for repairs to the gas pipes in the plaintiff's building was not eventuated by defendant's shut-off of gas to the building in order to repair the leak safely, but by the already sub-code condition of the building's nearly century-old pipes" (*id.*, 282 AD2d at 294 [1st Dept 2001]).

The City presents evidence in the form of deposition testimony to support its contention that the damages Edgeco claims were not caused by the City's negligent conduct. Specifically, the City asserts that the three Edgeco buildings on Bradhurst Avenue required replacement of some pipes and successful pressure test results before their service could be restored. Those tasks took only three to four weeks to complete (Fortunato Edgeco affirmation, ¶ 36, citing Leon Tr at 22:1-23:1; 23:10-24:11; 34:18-35:3; 45:24-46:10; 66:19-24), and form no part of the \$85,880.84 Edgeco is seeking in damages (*see* Rafferty affirmation, at ¶ 7). Edgeco attributes its damages wholly to work performed at 267 Edgecombe Avenue (*see* Response to Discovery Demands, ¶¶ 1-2 and exhibits A and B).

Unlike its Bradhurst Avenue buildings, 267 Edgecombe did not have shutoff valves on any of its risers, which made it necessary to install shutoff valves on each of them, to bring the building "up to Code" (Fortunato Edgeco affirmation, ¶ 37, citing Leon Tr at 23:3-9; and 44:17-

45:10). This was a substantial undertaking that delayed restoration of gas service to that building for about 4 months after the Main Breaks occurred (*id.* citing Leon Tr at 23:3-9; and 47:8-45:16).

Edgeco contends that the City's motion fails because it did not identify the "sub-Code condition" at the Premises. While it is true that the City did not provide a specific citation to the relevant Code provision, it did refer to the alleged sub-Code condition time and again: the gas risers in the building at 267 Edgecombe Avenue lacked shutoff valves. At the time of the Main Breaks, the applicable Code mandated that, in multiple tenant buildings, "shutoff valves shall be provided for each tenant" and that "[e]ach tenant shall have access to the shutoff valve serving that tenant's space" (City's 2008 Construction Codes, Fuel Gas Code, Chapter 4, Section FGC 409.3.1 [available at <https://www1.nyc.gov/site/buildings/codes/2008-construction-codes.page#admin>])² Accordingly, the City is entitled to summary judgment, dismissing Edgeco's cause of action against it.

Motion Sequence No. 004

In Motion Sequence Number 004, the City moves for partial summary judgment, dismissing Con Ed's claim to \$3,934,465.85 of the \$5,953,540.10 in damages it seeks to recover. The City's claim is attributed to the direct and indirect costs that Con Ed incurred by having its own employees repair the gas main, which the City claims cannot be recovered; or to unrelated invoices improperly ascribed to the gas main break; or to other charges not properly documented.

In opposition, Con Ed maintains it should be awarded the full amount it seeks in damages against the City because it is entitled to recover its actual costs to repair damages caused by the City's negligence, even if it includes the labor costs of Con Ed's own employees, and because its

² The City's 2008 Building Codes were superseded by its 2014 Building Codes, available at <https://www1.nyc.gov/site/buildings/codes/2014-construction-codes-updates.page>.

other invoices and charges are attributable to the gas main break and supported by substantial evidence.

In his commentaries, Justice Dillon of the Second Department states that “a summary judgment motion may be filed by the plaintiff or defendant that seeks to establish the amount of damages as a matter of law, while leaving the issue of liability for trial” (Hon. Mark C. Dillon, Supplementary Practice Commentaries, McKinney’s Cons Laws of NY, CPLR 3212, C3212:43 [2021]).

“Crucially, in instances where summary judgment is granted, the order is not technically rendered under CPLR 3212 (b) because that subdivision speaks to the establishment of ‘the cause of action or defense.’³ A determination of damages, ahead of any finding of liability, does not speak to the establishment of a cause of action or defense. Instead, the order granting summary judgment on damages is technically issued pursuant to CPLR 3212 (g)⁴ which . . . allows the court to examine papers before it and specify such facts as it deems established for all purposes of the action, and to make any order as may aid in the disposition of the action”

(*id.*).

To grant summary judgment on damages without first determining liability, the court must find that the movant has shown facts relevant to damages which “are not in dispute or are incontrovertible” and so may be “deemed established for all purposes in the action” (CPLR 3212 [g]). “Circumstances where damages-only summary judgment motions may be sought [include] enforcing liquidated damages clauses in contracts, so long as they do not violate public policy and

³ CPLR 3212 (b) provides, in pertinent part, that “[a] motion for summary judgment . . . shall show that there is no defense to the cause of action or that the cause of action or defense has no merit.” “The motion shall be granted if, upon all of the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (*id.*).

⁴ Subsection (g) of CPLR 3212 provides:

“If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order as may aid in the disposition of the action.”

bear a reasonable relation to the probable loss [or] dismissing a claim of punitive damages that is not allowable as a matter of law” (*id.* [citations omitted]).

“[U]nder New York law, the appropriate measure of recovery for damaged utility property is either the entire costs of repairs, or the actual cost of emergency expenses together with the present day cost of replacing damaged or destroyed equipment, less accrued depreciation, and any allowance for salvage” (*Verizon-New York, Inc. v Reckson Assocs. Realty* (2004 NY Slip Op 30107 [U], * 4 [Sup Ct NY County 2004] [Richter, J.S.C.], *revd on other grounds*, 19 AD3d 291 [1st Dept 2005] [internal quotation marks and citations omitted]). “There is no legal prohibition against damages for the wages paid to salaried employees or the amounts expended on the use of previously-owned equipment” (*id.* 2004 NY Slip Op 30207 [U], * 4-5).

The City alleges that the \$5,953,540.10 in damages, which Con Ed ascribes to the City’s negligence in causing the Main Breaks, falls into five categories: (i) \$1,577,429.02 for direct labor costs in wages Con Ed paid to its employees for repair of the gas main; (ii) \$1,163,794.49 for employees’ indirect labor costs, such as payroll taxes, benefits, and FICA contributions; (iii) \$255,378.69 for materials and supplies which it bought or used from its inventory to repair the gas main; (iv) \$2,664,664.17 for amounts Con Ed paid to its vendors and contractors for repair of the gas main; and (v) \$292,273.73 for miscellaneous expenses, such as management and petty cash expenses which lack back-up documentation.

The City argues that the entire amount Con Ed seeks for direct and indirect labor expenses in categories (i) and (ii) – \$2,741,223.51 – must be disallowed because, under *Coyne v Campbell* (11 NY2d 372 [1962]) and its progeny, the cost of paying employees to perform their regular job functions does not constitute compensable damages. The City also argues that such labor cost damages must be denied because Con Ed did not base its calculations on actual rates of pay but on

average pay rates, and failed to provide sufficient documentation to differentiate between regular and overtime pay, rendering its calculations speculative.

Coyne, however, is inapposite. In that case, the Court of Appeals held that a surgeon who suffered a whiplash injury in an automobile accident could not obtain damages for medical treatment because that treatment was rendered by his nurse and his physician colleagues in his medical office “gratuitously as a professional courtesy” and so he incurred no out-of-pocket expenses on which to base a damage claim (11 NY2d at 373-74). The Court went on to note that the physiotherapy treatments he received from his nurse, for several hours each week, were given during regular office hours and did not involve any payment to the nurse beyond regular salary, and so did not “result[] in compensable damage to plaintiff” (*id.* at 375).

The City’s reliance on *Media Logic, Inc. v Xerox Corp.* (261 AD2d 727 [3d Dept 1999]), is also misplaced. In that case, Media Logic, a commercial tenant, joined its landlord in suing the manufacturer of a photocopier which allegedly caused a fire that destroyed its premises and property. *Media Logic* is readily distinguishable on its facts.

First, in *Media Logic*, the Third Department found that the lower court properly “excluded Media Logic’s claim [] for internal labor costs” because “there was no evidence presented establishing that increased labor costs were necessary and attributed to the fire or its aftermath” (*id.* 261 AD2d 729-30). “Media Logic’s employees were salaried and no proof was presented that Media Logic had to expend additional moneys for compensation and/or bonuses, nor was there any evidence that work productivity was diminished as a result of the fire” (*id.* at 730). Furthermore, “[t]he record does not support a finding that Media Logic was required to pay its employees for overtime, that client-related work was sacrificed for fire-related activities, or that the employees did, in fact, work more hours after the fire” (*id.*). The rest of the “internal labor

costs” Media Logic sought to recover as damages were even farther off the mark (see *Reckson Assocs. Realty, supra*, 2004 NY Slip Op 30107 [U], * 5 [“The court in *Media Logic* disallowed the plaintiff’s claim for increased internal labor costs - specifically, gifts to employees and an open-house reception - because no evidence was presented linking them to the subject matter of the litigation, which involved a fire caused by a faulty xerox machine”]).⁵ [NS1]

Here, Con Ed asserts that it does not seek to recover damages for the labor costs of any of its salaried managerial employees who worked on the Main Breaks (affidavit of Francis McBrien, sworn to November 9, 2020 [McBrien aff] [NYSCEF Doc No. 163], ¶ 11). Instead, it seeks to recover the labor costs of its employees working on the Main Breaks who were paid hourly wages, not salaries, and earned overtime when they exceeded forty hours a week (*id.*, ¶ 10). Con Ed also seeks to recover overtime, but not salary, paid to its junior managerial employees who worked on the Main Breaks, who were not exempt from federal minimum wage and overtime requirements under the Fair Labor Standards Act (29 USC § 291 *et seq.*) (*see id.*).

Con Ed further asserts that the extent of damage to the gas main was extraordinary and led it to act on an emergency basis to restore service as soon as possible for its customers, by diverting Gas Operations department employees from their regular duties, such as inspections and minor gas leak repairs, and pulling employees from other departments and from other areas of Manhattan, Queens, the Bronx, and Westchester in response. Con Ed also had to hire contractors at additional costs to ensure its diverted workers’ regular job duties were performed (*id.* at 1, 7-9). Thus, it

⁵ The City also relies on an unreported case, *Verizon New York, Inc. v City of New York* (Sup Ct, Kings County, Feb 9, 2015, Jimenez-Salta, J.S.C., index No. 31968/2006), which follows the analysis adopted by the Third Department in *Media Logic*. Justice Richter of this court, however, sided with a different line of Third Department cases in *Verizon-New York v Reckson Associates Realty*, which hold that an award of damages for the wages paid to a plaintiff’s personnel for the time spent repairing the damaged property was necessary because “there was no other way for plaintiff to be made whole, and that plaintiff should not be penalized because the repairs were performed by its employees rather than an outside contractor” (2004 NY Slip Op 30107, * 5 [U], citing *New York State Thruway Auth. v Civetta Constr. Corp.*, 62 AD2d 530 [3d Dept 1978], *State of New York v Sossei*, 144 AD2d 888 [3d Dept 1988], and *New York State Elec. & Gas Corp. v Goettsche*, 48 Misc 2d 786 (Sup Ct, Tompkins County 1965)).

cannot be said that Con Ed's wage and benefit payments were made "gratuitously" to these employees (*Coyne, supra*, 11 NY2d at 374).

Con Ed also denies that its labor cost calculations were "incalculably speculative," as the City contends, and insists that its methodology is not only reasonable but also mandated by the New York State Public Service Commission (see affidavit of John de la Bastide, sworn to November 6, 2020 [NYSEF Doc No. 162], ¶¶ 3-4), arguing that such wage averaging promotes fairness by ensuring that a particular project's cost is not significantly higher or lower based on the seniority of the people involved, and that averaging departmental wages is regularly used for cost and project accounting and is a reliable, well-accepted method for determining damages for actual past expenses paid.

The City's arguments on this point are unavailing. Con Ed's alleged inability to measure damages with "absolute mathematical certainty does not bar substantial recovery if they may be approximately fixed. The damages must be compensatory only. Reasonable certainty as to the amount is all that is required" (*Steitz v Gifford*, 280 NY 15, 20 [1939] [citation omitted]). Accordingly, this branch of the City's motion for partial summary judgment against Con Ed is denied.

The City further argues that \$197,295.75 of the \$2,664,664.16 Con Ed paid to contractors and vendors under category (iv) must be disallowed because that portion of its payments represented work performed *before* the August 12, 2011 Main Breaks, and that any award under category (iv) must also disallow the \$438,626.01 that Con Ed allegedly paid to Keyspan Energy Corporation (Keyspan); and the \$557,320.58 Con Ed allegedly paid to Public Service Electric & Gas Co. (PSE&G), to help repair its gas main, because Con Ed failed to produce relevant contracts, invoices, and other documentation as proof of these alleged payments.

Con Ed opposes this part of the City's motion as well. First, Con Ed asserts that the City is factually mistaken in alleging that Con Ed seeks payment for contractor and vendor billings that pre-date the Main Breaks. Con Ed explains that the \$197,295.75 it seeks is comprised of charges relating to the water main break listed on three ULC Robotics invoices,⁶ not only to the two the City identified. Moreover, it does not include the July 25, 2011 invoice from Synapp North, Inc., or the June 9, 2011 invoice from Geltech Solutions, Inc. (*see* affirmation of Gina M. Fortunato, Esq., executed July 13, 2020 [Fortunato Con Ed affirmation] [NYSEF Doc No. 107], exhibit F3 [NYSCEF Doc No. 146], at Con Ed 560, 564), which Con Ed confirms make up no part of its damages claim. The City does not question these assertions on reply and so the court deems its silence to be its concession on these points.

Second, Con Ed asserts that it has provided competent evidence to support the repair charges invoiced by Keyspan and PSE&G. Con Ed asserts that its accounting records reflect that it paid \$557,320.58 to PSE&G and \$438,826.01 to Keyspan for repair work on the gas main (*see* Fortunato Con Ed affirmation, exhibit F3, at Con Ed 503), and that it provided substantial deposition testimony relating to Con Ed's billing, payment and accounting of these charges (*see* transcripts of January 26, 2016 deposition of Marietta DeLuca [DeLuca] [Fortunato Con Ed affirmation, exhibit A], at 10:17-25; DeLuca June 24, 2016 deposition [Fortunato Con Ed affirmation, exhibit B], at 21:9-37:14; and DeLuca February 14, 2018 deposition [Fortunato Con Ed affirmation, exhibit C], at 31:12-32:17 [NYSCEF Doc Nos. 108, 109, and 110]), but acknowledges that it inadvertently omitted supporting invoices from PSE&G and Keyspan in its

⁶ Con Ed reports the charges are: (i) \$47,818.34 of the \$67,600.66 billed on ULC Robotic Invoice No. 8920M-B, for work performed on the water main break from August 12 to 14, 2011; (ii) \$96,396.00 of the \$106,641.16 billed on Invoice No. 8924M-B for water main break work performed between August 14 and 21, 2021; and (iii) \$32,742.15 of the \$47,060.40 billed on Invoice No. 8926M-B for work performed between August 22 and to August 25, 2021 (citing affirmation of Gina M. Fortunato, Esq., executed July 13, 2020 [Fortunato Con Ed affirmation] [NYSEF Doc No. 107], exhibit F3 [NYSCEF Doc No. 146] [Con Ed accounting production] at Con Ed 405-470).

document production. It provides copies of its PSE&G invoices in its opposition papers and pledges to retrieve Keyspan invoices from its record storage vendor and produce them before trial.

The City again did not take issue with Con Ed's assertions regarding the amounts owed to PSE&G and Keyspan and so has conceded these points as well. Even if this were not so, this facet of the City's motion fails. Con Ed asserts the City cannot prevail on this aspect of its motion by pointing to gaps in its opponent's proof but instead must show its own entitlement to relief (citing *Kourlemos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]). In a similar vein, to grant summary judgment on damages without first determining liability, the court must find that the movant has shown facts relevant to damages which "are not in dispute or are incontrovertible" and so may be "deemed established for all purposes in the action" (CPLR 3212 [g]). Although Con Ed concedes its disclosures regarding these payments is incomplete, it raises sufficient issues of fact regarding the amounts it owed to Keyspan and PSE&G to preclude summary judgment on those damage claims.

Conclusion

For all the foregoing reasons, it is hereby

ORDERED that defendant the City of New York's motion for summary judgment in Motion Sequence Number 003, to dismiss the cause of action for negligence asserted against it by plaintiffs 267 Edgeco LLC and Bradhurst Associates, is **GRANTED**; and it is further

ORDERED that defendant the City of New York's motion for partial summary judgment in Motion Sequence Number 004, to dismiss certain claims for damages asserted by plaintiff Consolidated Edison Company of New York, Inc., is **DENIED** in its entirety.

This is the Decision and Order of this court.

Dated: June 2, 2022

ENTER:



HON. J. MACHELEC SWEETING, J.S.C.